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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/707,168

11/25/2003

Yash Sinha

2002-039

1167

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08/04/2006

U.S. ARMY TACOM-ARDEC

ATTN: AMSTRA-AR-GCL

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PICATINNY ARSENAL, NJ 07806-5000

EXAMINER

POLLIPOFF, STEVEN B

ART UNIT

PAPER NUMBER

3728

DATE MAILED: 08/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |  |                                     |  |
|------------------------------|--|-------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/707,168   | <b>Applicant(s)</b><br>SINHA ET AL. |  |
|                              | <b>Examiner</b><br>Steven B. Pollicoff | <b>Art Unit</b><br>3728             |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 23 May 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-18 have been considered but are moot in view of the new ground(s) of rejection.

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the first and second bottom members of claim 1 and the octagonal impact rings of claim 7 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

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the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The amendment to the drawings filed 12/04/03 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: The elimination of an octagonal bottom cap ring and connected shoulder strap in the amended drawings is considered new matter.

Applicant is required to cancel the new matter in the reply to this Office Action.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422

F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed **terminal disclaimer** in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-18 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 3,5,10 and 12 of Lam et al., U.S. Patent No. 6,772,877 in view of Baumgardner (US Pat No 4,643,302), Holsted (US Pat No 5,176,465), LaBianca et al., (US Pat No 4,733,773) and Moore et al., (US Pat No 3,486,451).

With respect to claims 1,3-5,7,9 and 10, Lam discloses all of the limitations of the present invention except for teaching a metal container and teaching a stacking mechanism that comprises plugs and lateral holes wherein the stacking mechanism further includes a) a first top member and a second top member located adjacent the cap top ring of the cap and located 180 degrees from one another about the cap such that the first top member interlocks with the second top member of an adjacent cap by means of a portion of a plug in a lateral hole and b) a first bottom member and a second

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bottom member located adjacent the bottom end of the container and located 180 degrees from one another about the container such that the first bottom member interlocks with the second bottom member of an adjacent container by means of the portion of the plug in the lateral hole. However, as to the container being metal, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the container made of metal, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. With respect to the stacking mechanism, Holsted discloses a stacking mechanism including a male and female component to connect two housings wherein the male and female components interlock for alignment and stacking purposes (Fig 2 and 3). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the ammunition container of Lam to include male and female components on a housing 180 degrees from each other (i.e. impact rings/stacking indices), as taught by Holsted, for better, more secure stacking of the container.

With respect to claims 2, Lam discloses all of the limitations except a removable and adjustable shoulder strap attached to the container bottom ring and cap top ring. However, Baumgardner discloses an adjustable and removable strap (Baumgardner Fig. 12, reference number 25) capable of being positioned such that it is attached to the container bottom ring and the cap top ring to achieve desired stability and balance of the load (Column 3, lines 11-13). Therefore, it would have been obvious to one of

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ordinary skill in the art at the time the invention was made to further modify the Lam container, as modified above, to include an adjustable strap on the container so that a user transporting the ammunition container has the option to either hand carry the load or carry it on their back with the shoulder strap.

As to claim 6, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have at least four impact rings surrounding the Moraine container, since it has been held that mere duplication of essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

With respect to claims 8 and 11, Lam as modified above, does not disclose that the container bottom ring extends to a longitudinal end of the bottom end. However, LaBianca discloses that the container bottom ring extends to a longitudinal end of the bottom end (LaBianca Fig. 1, see upper left most block/ring 46) to better protect the container. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the Lam container, as modified above, to extend the impact rings over the container bottom ring, as taught by LaBianca, for the purpose of better protecting the ammunition from shock if the container were dropped.

With respect to claims 12 and 13, Lam discloses a tamper evident member (Lam column 8, line 24) and a locking mechanism pulling the cap into the guiding mechanism during an initial locking movement (column 6, lines 1-8).

With respect to claim 14, see claim 2 rejection above.

With respect to claim 15, see claim 6 rejection above.

With respect to claims 16-18, see rejection for claims 1,3-5,7,9 and 10 above.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. Pollicoff whose telephone number is (571)272-7818. The examiner can normally be reached on M-F: 7:30A.M.-4:00P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571)272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

4BP 8/2/06  
SBP



**JILA M. MOHANDESI  
PRIMARY EXAMINER**



DRAWINGS NOT APPROVED FOR ENTRY



FIG. 1

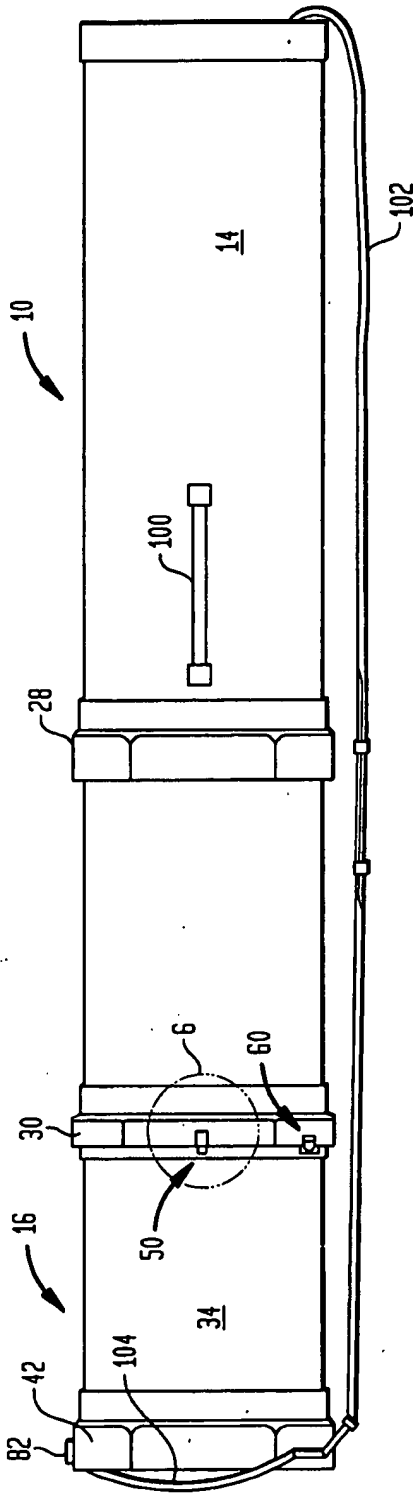


FIG. 2

